Supreme Court, U.S.
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No. 91-1208

In The

Supreme Court of the United States

October Term, 1991

DRILAKE FARMS, INC., *et al.*,

Petitioners,

v.

JULIO SURRILLO, *et al.*,

Respondents.

Petition For Writ Of Certiorari To The West Virginia Supreme Court Of Appeals

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In this case, an employer voluntarily and purposefully submitted a job offer to the U.S. Employment Service system in order to recruit workers on that job offer in other states. Workers were recruited in the forum state and accepted the job offer there with the knowledge of that employer, who took no action to stop or repudiate the recruitment of workers in the forum state and who accepted the benefits of the recruitment activities undertaken in the forum state.

The question presented is whether, on these facts, the employer is subject to *in personam* jurisdiction in the forum state in a suit founded upon breach of the contract formed when the recruited workers accepted the employer's job offer.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION 5

There is no conflict between the ruling below and the rulings of state and federal appellate courts on the issues raised by this case.

CONCLUSION 9

APPENDIX 1a

Stipulation of Facts filed with the Circuit Court for Jefferson County, West Virginia 1a

Excerpts from Exhibit G to the Stipulation (third and seventh pages) 12a

Letter from William A. Johnston to Honorable Robert K. Woltz dated November 26, 1991 ..... 16a

TABLE OF AUTHORITIES

Page

CASES

Alfred L. Snapp & Sons, Inc. v. Puerto Rico, 458 U.S. 592 (1982) 1, 3, 4

Chery v. Bowman, 901 F.2d 1053 (11th Cir. 1990) 6, 7

Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977), *cert. denied* 436 U.S. 945 (1978) 2

Gregory-Ayala v. Rinehart Orchards, Inc., Civil No. 13,575 (Circuit Court for Washington County, MD, Jan. 23, 1986) 6

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 5

Lopez-Rivas v. Donovan, 629 F.Supp. 564 (D.P.R. 1986) 7, 8

Rios v. Altamont Farms, Inc., 64 N.Y.2d 792, 476 N.E.2d 312, 486 N.Y.S.2d 913 (1985) *rev'g. Rios v. Altamont Farms, Inc.*, 475 N.Y.S.2d 520 (N.Y. App. 1984), *cert. denied* 473 U.S. 905 (1985).....5, 6

Roman Vela, Inc. v. Sagner, Inc., 382 F.Supp. 478 (D.P.R. 1974) 4

Vencedor Manufacturing Co., Inc. v. Gougler Industries, Inc., 557 F.2d 886 (1st Cir. 1977) 4

RULES

Supreme Court Rule 10 6

STATEMENT OF THE CASE

Petitioners' Statement of the Case omits many material, uncontested facts which directly affect both the question presented by this case and its resolution.

This case arose out of series of events in 1978, when East Coast apple growers, including the petitioners, sought workers to harvest their apple crops. That year, over 900 workers accepted the various growers' job offers in Puerto Rico and traveled to the East Coast apple orchards for work. Of those, 420 Puerto Rican workers, including respondents, reported for work at various orchards in Virginia. After three weeks, fewer than 30 Puerto Rican workers still had jobs in the Virginia apple harvest. The rest, including respondents, had either been refused work or had been fired for alleged lack of productivity, and their jobs filled by temporary foreign workers. *See Alfred L. Snapp & Sons, Inc. v. Puerto Rico*, 458 U.S. 592, 597 and n. 5 (1982); Pet.App. 33a.

The facts specific to this case are as follows. Petitioners (the "growers") are engaged in the commercial production of apples for sale in interstate commerce (Pet.App. 29a; Resp.App. 9a, ¶¶ 22, 27)[1]. Apples are a perishable crop which must be harvested within a short period of time; harvesting is labor intensive (Pet.Br. 5; Resp.App. 10a, ¶ 29).

In 1978, the petitioner growers voluntarily chose to apply for permission to use temporary foreign workers.

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[1] Respondents' Appendix ("Resp.App.") includes the Stipulation of Facts which was submitted by the parties to the trial court and excerpts from one exhibit to the Stipulation.

They did this because they feared they would be unable to locate and recruit enough workers to harvest their crop (Pet.App. 48a-49a; Resp.App. 9a-10a, ¶¶ 24, 30, 31). As part of their application for the temporary foreign worker program, the growers prepared and submitted a job offer for circulation through the U.S. Employment Service system, a system administered by the U.S. Department of Labor, in order to try to recruit domestic workers within the United States (Pet.App. 30a, 49a). The growers could import and employ temporary foreign workers only if there were not enough workers in the United States, including Puerto Rico, who were willing to take the jobs (Pet.App. 31a).

The job offer submitted by the growers through the interstate Employment Service system was a detailed statement of the terms and conditions of employment being offered by the growers (Pet.App. 48a; Resp.App. 3a, ¶ 5). It contained the growers' express certification that the "job offer describes the actual terms and conditions of employment being offered by me and contains all the material terms and conditions of the job." (Resp.App. 14a). Workers could not bargain for better terms; if they did so, they would be considered unavailable for the jobs, and the jobs would be filled by alien workers instead. *See Flecha v. Quiros*, 567 F.2d 1154 (1st Cir. 1977), *cert. denied* 436 U.S. 945 (1978).

The growers' job offer indicated on its face that it would be circulated within the Department of Labor's Region II, which includes Puerto Rico (Resp.App. 11a, ¶ 35 and 13a, at item 18). The growers were subsequently specifically notified that their job offer was being sent to Puerto Rico to recruit workers for their apple harvest jobs

(Pet.App. 49a; Resp.App. 7a-8a, ¶ 17). The growers could have canceled the job offer and stopped recruitment at that point, but did not (Pet.App. 50a; Resp.App. 9a, ¶ 23).

Acting on the growers' job offer, the Puerto Rico Department of Labor, which is part of the U.S. Employment Service system, engaged in substantial efforts to find U.S. workers to fill the growers' urgent harvest labor needs. It screened applicants for the jobs with petitioners; it required applicants to obtain certificates of good health from the public health authority; and it directed them to obtain certificates of good conduct from local police. The Department also provided job orientation for the workers in Puerto Rico and made arrangements for the workers to be transported from Puerto Rico to the growers' job site (Pet.App. 32a).

The growers had actual knowledge that workers were being recruited for them by the Puerto Rico Department of Labor and that Puerto Rican workers had accepted the job offers (Pet.App. 32a-33a; 49a). They did not repudiate or try to stop these actions. Instead, the growers made repeated inquiries about the workers who had been recruited (Pet.App. 49a-50a; Resp.App. 8a, ¶ 18). At the same time, the petitioners participated, through their association, in litigation in federal court in which they represented that they would give priority to Puerto Rican job applicants. (Resp.App. 11a, ¶ 34; *Alfred L. Snapp & Sons, Inc. v. Puerto Rico, supra,* 458 U.S. at 598 n. 5).

The respondents are fourteen Puerto Rican workers and the parents of four of the workers who were minors

at that time. All of the fourteen workers went through the screening and orientation conducted by the Puerto Rico Department of Labor, accepted the jobs in Puerto Rico, traveled from their homes to Virginia and reported for work with the petitioner growers. They worked for a short time, and they were then fired and replaced by temporary foreign workers (Pet.App. 33a). *See Alfred L. Snapp & Sons, Inc. v. Puerto Rico, supra,* 458 U.S. at 598 n. 5, 608.

The fourteen respondent workers returned home and filed three suits against the growers for breach of contract (Pet.App. 33a). In two of the cases, the parents of four workers who were minors also sued, seeking recovery for damages, mental anguish and suffering they suffered as a result of the growers' treatment of their sons. Petitioners were served in accordance with the Puerto Rico long-arm statute (Resp.App. 2a, ¶ 3; Pet.App. 33a). That statute extends jurisdiction of the Puerto Rico courts to the full extent permitted by the due process clause. *See Vencedor Manufacturing Co., Inc. v. Gougler Industries, Inc.*, 557 F.2d 886, 889 (1st Cir. 1977); *Roman Vela, Inc. v. Sagner, Inc.*, 382 F.Supp. 478, 480 (D.P.R. 1974). On advice of counsel, the growers voluntarily chose not to defend the lawsuits (Resp.App. 3a, ¶ 4; Pet.App. 33a).

The Puerto Rico courts, applying Puerto Rico law, held that the workers had accepted the job offers in Puerto Rico, creating a contract with the growers that bound them to travel to Virginia to work for the growers, an obligation they performed. Default judgments were entered in favor of respondents (Pet.App. 33a), who subsequently sought to enforce them in West Virginia, where petitioner Drilake is incorporated. The West Virginia trial

court refused to enforce the judgments (Pet.App. 1a-22a), but the West Virginia Supreme Court of Appeals reversed, holding that the judgments of the Puerto Rico courts were entitled to full faith and credit (Pet.App. 23a-60a). The growers now ask this Court to review that judgment.

REASONS FOR DENYING THE PETITION

There is no conflict between the ruling below and the rulings of state and federal appellate courts on the issues raised by this case.

The growers argue that certiorari should be granted because of an alleged misapplication by the court below of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). However, their real focus is on other cases which have applied *International Shoe* to identical fact situations. As is shown in the Statement of the Case, this case involves merely one subset of a series of incidents in which Puerto Rican workers were denied employment in 1978 by apple growers in several East Coast states. The lawsuits which arose from those events have produced results identical to the ruling below on the precise questions raised here. Thus, there is no reason for this Court to review the question presented by the petitioners.

In other states where cases raising the same issues as this one have been litigated to final judgment, the jurisdiction of the Puerto Rico courts has been upheld. *Rios v. Altamont Farms, Inc.*, 64 N.Y.2d 792, 476 N.E.2d 312, 486 N.Y.S.2d 913 (1985) (reversing and adopting the dissent in *Rios v. Altamont Farms, Inc.*, 475 N.Y.S.2d 520 (NY App.

1984)), *cert. denied* 473 U.S. 905 (1985); *Gregory-Ayala v. Rinehart Orchards, Inc.*, Civil No. 13,575 (Circuit Court for Washington County, MD, Jan. 23, 1986). No final state court ruling is to the contrary, and, thus, there is no conflict among the state courts.[2]

Nor is there any conflict between the West Virginia court's ruling and the ruling of any federal appellate courts. Petitioners argue that *Chery v. Bowman*, 901 F.2d 1053 (11th Cir. 1990), is in "direct conflict" with *Rios*, upon which the West Virginia court here relied, and therefore is in conflict with the decision below in this case (Pet.Br. 39-41). However, the *Chery* court recognized that the case before it was clearly distinguishable from *Rios*. *Chery v. Bowman*, 901 F.2d at 1057. *Chery* is therefore distinguishable from this case.

In *Chery*, a Virginia grower submitted an agricultural job offer, or clearance order, through the U.S. Employment Service system, as did the growers here. That job offer was sent to another state, Florida, and workers sought to sue the grower in that other state, as here. There the similarities end. Unlike the respondents here,

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[2] Petitioners state that a Virginia trial court has indicated it will rule that the Puerto Rico courts lacked jurisdiction in an identical matter (Pet.Br. at 42). However, no final order has been issued by that trial court. Indeed, on November 26, 1991, counsel for petitioners, who is also counsel for the growers in the Virginia case, requested a new hearing before a decision is issued in that case (Resp.App. 16a-17a). Thus, the state trial court case cited by petitioners presents no conflict with this case. In any event, conflicts involving a state trial court ruling on a particular issue cannot justify a grant of certiorari. *See* Supreme Court Rule 10.

none of the *Chery* plaintiffs was recruited in the forum state (Florida, there) on the employer's job offer. *Chery*, 901 F.2d at 1056. Moreover, unlike this case, the *Chery* plaintiffs' sole contact with the job offer occurred in Virginia, not in the forum state. *Id.* The *Chery* plaintiffs sought to file suit in the forum state solely because the job offer had been sent there, and the Eleventh Circuit ruled this was an insufficient contact to support jurisdiction. *Id.* at 1056-57. Thus, *Chery* might have some bearing if Puerto Rican workers had tried to sue Virginia growers in, for example, Utah on the theory that the growers' job offer had been circulated in Utah. But that situation is far different from what happened in this case.

In contrast to the *Chery* facts, the workers here filed suit in Puerto Rico because they were recruited in Puerto Rico, accepted the offer of employment there, initiated performance of their part of the contract by traveling from Puerto Rico, and because of the substantial activities undertaken in Puerto Rico to recruit them for petitioners' apple harvest. As the Eleventh Circuit noted, *Chery* is different from a case like this, where the growers received "substantial benefits" for the harvest of their perishable crop from the recruitment and processing of workers in the forum state. 901 F.2d at 1057. Thus, as the West Virginia Supreme Court held, there is no conflict between *Chery* and this case. (Pet.App. 56a-57a).

Nor does *Lopez-Rivas v. Donovan*, 629 F.Supp. 564 (D.P.R. 1986), conflict with the decision below. First, *Lopez-Rivas* was decided on subject matter jurisdiction grounds, not on *in personam* jurisdiction grounds. 629 F.Supp. 567; Pet.App. 51a-52a and n. 4. Second, *Lopez-Rivas* involved a different set of facts. The plaintiffs in

Lopez-Rivas were residents of Puerto Rico who made claims both against apple growers in the mainland United States and against the U.S. Department of Labor. In the claims against the growers, the *Lopez-Rivas* plaintiffs alleged that they were hired through the circulation of job offers through the interstate Employment Service system. But unlike respondents here, none of the *Lopez-Rivas* plaintiffs traveled to the jobs because the Department of Labor had ordered that no more recruiting be performed in Puerto Rico. *Lopez-Rivas*, 629 F.Supp. at 569. The *Lopez-Rivas* court itself noted the difference between that case and cases like this one. It said that individuals like the workers here, "who were in fact hired for the 1978 apple harvest and who did in fact go to the farms in the continental United States," presented "an entirely different factual and legal scenario." *Lopez-Rivas*, 629 F.Supp. at 569. The West Virginia Supreme Court also noted this distinguishing fact (Pet.App. 54a).

CONCLUSION

Because there is no conflict between the decision in this case and the decision of any other state court of last resort or federal appellate court, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE CIRCUIT COURT FOR JEFFERSON COUNTY, WEST VIRGINIA:

JULIO SURRILLO, ET AL, Plaintiffs, v. DRILAKE FARMS, INC., Defendant.	)	CIVIL ACTION NO. 87-C-46
WILLIAM OCASIO, ET AL, Plaintiffs, v. IRVIN KING, ET AL, Defendants.	)	CIVIL ACTION NO. 87-C-47
CARMELO ROSAIRO VASQUEZ, Plaintiff, v. IRVIN KING, ET AL, Defendants.	)	CIVIL ACTION NO. 87-C-48

STIPULATION OF FACTS

The parties hereby enter into an agreed Stipulation of Facts. The purpose of this Stipulation is to eliminate the need for an evidentiary hearing and permit resolution of these cases on summary judgment. By entering into this

Stipulation, neither Plaintiffs nor Defendants concede the relevance or materiality of a particular stipulated fact to the issue presented by the cases. The parties specifically reserve all objections as to the relevance or materiality of any fact contained in this Stipulation.

1. All the facts in this Stipulation are applicable to each of the three (3) cases cited in the caption, except as otherwise noted.

2. Hereinafter the term "Plaintiff(s)" shall include each Plaintiff identified in each of the three (3) cases cited in the caption and the term "Defendants" shall mean the Defendant(s) identified in each of the cases now pending in this Court, except as otherwise noted.

3. Each Plaintiff obtained judgment against "Irvin King Drilake Farm, Inc." in the Superior Courts of Puerto Rico. Each judgment was obtained by default after service of process was made upon the Defendant by substituted service in accordance with the requirements of the Commonwealth of Puerto Rico statute. In personam jurisdiction over Defendants by the Puerto Rican Courts was based on Puerto Rico's long-arm jurisdiction statute. A true and correct copy of each Judgment Order, and an accurate translation into English of each Judgment Order, is attached to the complaint filed in each of these cases. The amount of each judgment is listed in each Judgment Order. Plaintiffs seek to enforce the default judgments by means of these lawsuits. The validity of the default judgments obtained in Puerto Rico and their enforceability against the Defendants are the only issues presented by these cases.

4. Having received a copy of the summons and complaint by certified mail, Defendants knew that they were being sued in Puerto Rico, but voluntarily chose not to defend the actions in Puerto Rico on advice of counsel.

5. On or about April 28, 1978, Defendant, Irvin King, Drilake Farms, Inc., submitted an Application for Alien Employment Certification (Form MA 7-50B) and the Virginia Employment Commissioner for submission to the U. S. Department of Labor pursuant to 20 C.F.R. § 655.201 (1979). As part of the application for certification to employ alien workers, Defendant submitted a Clearance Order, or Job Offer, containing the terms and conditions of employment of the job for which Defendant was seeking permission to import temporary foreign workers. A true and correct copy of the application and job offer are attached as Exhibit G.

6. Defendant could be granted permission to employ temporary foreign workers only if there were insufficient workers in the United States available to fill the employer's jobs. As a condition of applying for temporary labor certification, Defendant agreed to cooperate with the U. S. Employment Service in the manner set forth in 20 C.F.R. § 655.203(d), (e) and (f) and the Regulations now at 20 C.F.R. § 653.500, et seq. See also exhibit G.

7. The Virginia Employment Commission is a state component of the United States Employment Service created by the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k, and administered by the U. S. Department of Labor.

8. The regulations which govern the Employment Service System are set forth at 20 C.F.R. § 653.500 *et seq.* (1982) (formerly located in 20 C.F.R. § 653.108 (1978)).

According to these regulations, a local office which receives a Clearance Order first attempts to recruit workers for the employer in the local labor market. 20 C.F.R. § 653.501(d)(7) (formerly 20 C.F.R. § 653.108(c)(7)). If the local office is unable to recruit sufficient local workers, the local office will place the Clearance Order into the intrastate clearance system for recruitment of workers for the employer throughout the state. 20 C.F.R. § 653.501(d)(7) (formerly 20 C.F.R. § 653.108(c)). If the state agency is unable to locate sufficient workers within the state, the state agency places the Clearance Order into the interstate clearance system for circulation to so-called labor supply states and recruitment of workers in those states for the employer. 20 C.F.R. § 653.501(e)(2) (formerly 20 C.F.R. § 653.108(d)). The U. S. Department of Labor determines the areas of labor supply to which the Clearance Order shall be sent. 20 C.F.R. § 653.501(e)(3) (formerly 20 C.F.R. § 653.108(e)(2)(i)(A)). *See also* 20 C.F.R. § 655.205(a).

9. Historically, apple growers in the Eastern United States have not recruited sufficient numbers of U. S. workers to accomplish the harvest. In anticipation of that occurrence in 1978, the Defendants' Clearance Order was submitted in accordance with 20 C.F.R. § 655.200 *et seq.*, the temporary foreign labor certification regulations.

10. The extent of the circulation of the Clearance Order submitted by Defendant was determined solely by the availability of local labor and the distribution policies of the U. S. Department of Labor, and Defendant made no specific request concerning the circulation of his Clearance Order.

11. Under the applicable law of the United States at the time that Defendant submitted his Clearance Order in April, 1978, the Commonwealth of Puerto Rico required that employers recruiting workers in the Commonwealth offer minimum terms and conditions of employment which were higher than those required by the temporary labor certification regulations, 20 C.F.R. § 655.200, *et seq.* *See Hernandez Flecha v. Quiros,* 567 F.2d 1154 (1st Cir. 1977), *cert. denied,* 436 U.S. 945 (1978). In *Quiros,* the First Circuit held that Puerto Rican workers could not be considered "available" within the meaning of the Immigration and Nationality Act as long as the special conditions placed on their employment by Puerto Rico Public Law 87 remained in effect.

11A. Under the provisions of Public Law 87, Defendant was subject to civil and criminal sanctions if it attempted recruitment in the Commonwealth of Puerto Rico without due authorization of the Secretary of Labor. See 29 LPRA §§ 530, 534. See Exhibit I attached.

12. Following the United States Supreme Court's denial of certiorari in the *Quiros* case on June 5, 1978, the legislature of Puerto Rico took steps to amend Puerto Rico Public Law 87. On July 13, 1978, the Commonwealth of Puerto Rico enacted into law an amendment which authorized the Commonwealth Secretary of Labor and Human Resources to exempt prospective employers from Public Law 87 under certain circumstances. Thereafter, at the request of the Commonwealth of Puerto Rico Secretary, the U. S. Department of Labor forwarded the Defendant's Clearance Order to Puerto Rico on August 2, 1978. The Puerto Rico Department of Labor and Human Resources (which is under the Wagner-Peyser System, the

Puerto Rican arm of the U. S. Employment Service), then proceeded to recruit Puerto Rican workers against Defendant's Clearance Order. At the time of such recruitment, the Defendant had not been advised by the Puerto Rican Secretary that Defendant had been exempted from the provisions of Public Law 87.

12A. Under applicable regulations, the Regional Administrator for Employment and Training for Region III (Delaware, Maryland, Pennsylvania, Virginia and West Virginia) was required on August 16, 1978, to make an official certification (twenty (20) days in advance of Defendant's date of need – September 5, 1978 – as stated in the Job Order). That decision is made as a result of recruitment efforts against Defendant's Job Order within the U. S. Employment Service, reflecting the number of U. S. workers officially determined as of that date to have expressed a desire to work for Defendant who the Administrator found to be available under 20 C.F.R. 655.206(a). By letter dated August 23, 1978, to Jess C. Ramaker (Exhibit H attached), the Commonwealth Secretary of Labor and Human Resources stated that Defendants had been exempted from the requirements of Public Law 87.

13. Defendant's Clearance Order clearly specified the manner in which interested workers were to be referred to Defendant by the United States Employment Service. Item 15 of Defendant's Clearance Order, dealing with the subject of referral instructions, stated "referral of crews and of individuals shall be made through the Winchester local office in order to ascertain current employment, crop, and housing information and to enable proper arrangements to be made". Item 16, dealing with

collect calls, stated that collect calls would be accepted by the said Winchester office of the Virginia Employment Commission. Item 19 furnished the address of said office, the name of the Farm Placement Supervisor at that office and the telephone number.

14. The Employment Security Manual of the U. S. Employment Service (Field Operations Manual Part II, Employment Service Program, Paragraph 1808) (Exhibit A attached) sets forth the five (5) types of referral actions, one or a combination of which may be specified on the Clearance Order.

15. Plaintiffs were recruited for work with Defendant by the Puerto Rico Department of Labor and Human Resources offices in Puerto Rico, which is the state agency in Puerto Rico which is a part of the U. S. Employment Service. Plaintiffs did not contact Defendant directly prior to arriving in West Virginia for work with Defendant under the terms of Defendant's Clearance Order.

16. At no time did Defendant execute a Delegation of Hiring Agent (Form ES 569) form authorizing either the U. S. Department of Labor or the Puerto Rico Department of Labor and Human Resources to act as agent for the purposes of hiring. However, when submitting the Clearance Order and applying for temporary labor certification, Defendant signed the required assurance that it would cooperate with the Employment Service System in the active recruitment of U. S. workers.

17. By letter dated August 16, 1978, the U. S. Department of Labor advised Defendant, Irvin King, that, pursuant to the provisions of 20 C.F.R. § 655.206, it had

been determined that there were nineteen (19) U. S. workers available to fill the job opportunity (Exhibit B attached) and that nineteen (19) workers in Puerto Rico had been determined to be available and the names and locations of those workers would be available at the local employment office where the Job Order was placed.

18. Thereafter on August 21, 1978, the Winchester office of the Virginia Employment Commission was unable to furnish any names and locations of Puerto Rican workers so assigned (Exhibit C attached). On August 23, 1978, said office was able to furnish the names and Social Security Numbers of five (5) workers (none of whom ever appeared at Defendant's place of employment) (Exhibit D attached). Thereafter on August 24, 1978, said office was able to furnish the names and Social Security Numbers of eight (8) additional Puerto Rican workers, only two (2) of which eventually presented themselves for employment at Defendant's place of business and only one (1) of whom (Marcial Gonzalez) is a Plaintiff in these proceedings (87-C-47) (Exhibit E attached).

19. Except for Plaintiff, Marcial Gonzalez, all remaining Plaintiffs were first identified to Defendant upon their actual arrival in Winchester, Virginia, on September 8, 1978 (see Passenger Manifest covering twenty-seven (27) Puerto Rican workers, Exhibit F attached, which accompanied said persons on arrival).

20. By letter dated August 16, 1978, from the Regional Administrator, Employment and Training, U. S. Department of Labor (Exhibit B attached), Defendant was

informed that his request for temporary labor certification was partially denied because nineteen (19) workers had been recruited through the U. S. Employment Service in Puerto Rico under Defendant's Clearance Order.

21. As a condition of entry into the temporary foreign worker program, Defendant was required by Regulation to recruit, and to allow the U. S. Employment Service to recruit, U. S. workers in locations determined by the U. S. Department of Labor. See 20 C.F.R. § 655.205. Defendant cannot direct the Department of Labor to cease recruitment in any manner except by withdrawal of the application for temporary foreign labor certification.

22. Drilake Farms, Inc. is a corporation incorporated under the laws of West Virginia.

23. At no time did the Defendant withdraw his Clearance Order or application for temporary labor certification in 1978.

24. Participation in the temporary foreign labor program by an employer like Defendant is wholly voluntary.

25. Plaintiffs are citizens of Puerto Rico and therefore citizens of the United States.

26. As part of its application for temporary labor certification, Defendant agreed that it would provide employment to any qualified U. S. worker who applied to the employer for the job during the first 50% of the period stated in the Clearance Order.

27. Drilake Farms, Inc. is engaged in the commercial production of apples for sale in interstate commerce.

28. At all times relevant to this action, Irvin King was an officer of Drilake Farms, Inc. and had primary, day-to-day responsibility for managing the fall apple harvest.

29. The harvesting of apples is labor-intensive and requires that applies be picked in a relatively short period of time.

30. The normal, year-round workforce of Drilake Farms, Inc. is not sufficient to harvest its apple crop.

31. Drilake Farms submitted the Clearance Order and application for temporary labor certification in 1978 because it believed it would not be able to recruit sufficient labor from the local area, or from other areas within the United States, to harvest its apple crop.

32. The Clearance Order submitted by Defendant in 1978 contained all the terms and conditions of employment set out at 20 C.F.R. § 655.202 and was accepted by the Department of Labor on June 6, 1978 (See Exhibit B).

33. As part of its 1978 temporary labor certification application, Defendant agreed to comply with all assurances contained at 20 C.F.R. §§ 655.203 and 653.108(c)(2) and (c)(3).

34. In August, 1978, Defendant participated through its association, the Frederick County Fruit Growers Association, Inc., in a suit in the U. S. District Court for the Western District of Virginia, to compel the U. S. Department of Labor and the Immigration and Naturalization Service to permit Defendant to import and employ temporary foreign workers. *Frederick County Fruit Growers Association, Inc. v. Marshall,* C.A. No. 78-0086 (W.D.Va.). In

that action, the association acknowledged in a brief filed with the Court that an employer is required to provide employment to any qualified U. S. worker who applies to the employer until 50% of the contract period has elapsed.

35. The Department of Labor's Federal Region II encompasses the states of New York and New Jersey, the Commonwealth of Puerto Rico and the Virgin Islands.

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EXCERPTS FROM EXHIBIT G
TO THE STIPULATION OF FACTS
(third and seventh pages)

U.S. DEPARTMENT OF LABOR • MANPOWER ADMINISTRATION

CLEARANCE ORDER
RURAL MANPOWER JOB OFFER

1. Indust Code: 017

2. ESARS Order Number: III-VA-4-452A 884452

3. Occupational Title and Code: Harvest Worker, Fruit 403.687-018

4. Employer's Name and Address (Number, Street, City, State, and ZIP Code)
Mr. Irvin King
Drilake Farm
Rt. 2
Charles Town, W.Va. 25414

5. Period of Employment: From 9-5-78 To 11-3-78

6. Clearance Order Issue Date: 4-28-78

Job Offer Expiration Date: 11-3-78

7. Crew Leader's Name and Address
OPEN ORDER

Social Security Number

Home Phone

Leader's Functions: Supervises YES ☒ NO ☐; Transports YES ☒ NO ☐; Pays YES ☒ NO ☐; Assumes OASI YES ☒ NO ☐

8. Wage Rates, Special Pay Information and Deductions
Each worker will receive 32¢ per 2400 cubic in. box (29¢ per U.S.Standard Bushel of 2150.42 cu.in.)which is designed to produce at least the current adverse effect hourly rate. It is estimated that this piece rate will produce average (See Attachment #1)

9. No. Normal Hours of Work
Per Day: 8
Per Week: 48
Normal work days (circle): S (M T W T F S)

10. No. & Type of Workers Needed
Total Number: 27
No. Individual:
No. Family:
No. Group:

11. Job Specifications
Pick apples from trees and when necessary pick from ladders ranging up to 24 feet in length. The average length of ladders runs from 16'-24' and weighs approximately 50 lbs. Fruit picked must be placed in picking bags or buckets which are attached to the body with a shoulder harness and weigh between 30 - 50 lbs. when full. When filled with fruit the bags or buckets are to be emptied into field bins by releasing an opening at the bottom of the bag or bucket. Workers may be required to pick the entire tree or to spot pick the fruit.

Individual workers without crew leaders are supervised by the employer, or his agent, who provides daily transportation, training, job instruction, and who keeps payroll records.

The crew leader will supervise those workers in the crew and will be (See Att.#1)

12. Location of Job
Orchards are located near Wickliffe Church in Clarke County, Virginia and and Jefferson County, W.Va.

13. Board Arrangements
Crew leaders are responsible for making arrangements for feeding their crews. Meals for (See Att.#2)

14. Location and Description of Housing: Workers will be housed without charge in facilities of the Frederick County Fruit Growers Association at 801 Fairmont Avenue, Winchester, Virginia or in any other (See Att.#2)

Number and Capacity of Housing Units

Barracks	Family Units	Single Rooms
37 rooms 800 persons		77 rooms 267 persons

Housing meets Federal or higher State standards and is approved for occupancy by the following number of persons: 1067

15. Referral Instructions
Referral of crews and of individuals shall be made through the Winchester local office (See Att.#2)

16. Collect Calls Accepted

	YES	NO
By Employer	☐	☒
By Order Holding Office	☒	☐

17. Transportation Arrangements
See Attachment # 2.

18. Distribution of Clearance Order
Virginia State Office
Florida State Office
Winchester local office
Region II Region IV
Region III Region VI

19. Address of Order Holding Office
Virginia Employment Commission
P.O. Box 845
Winchester, Virginia 22601

20. EMPLOYER CERTIFICATION: This Job Offer describes the terms and conditions of employment offered by me.

Signature

Name of Agency Representative: Eugene Schultz, Farm Placement Supv.

Telephone: 703-662-2549

Title

Replaces Form ES 560A which is obsolete.

MA 7-90
Aug. 1973

13a

BEST AVAILABLE COPY

Attachment Sheet #7

A COPY OF THIS STATEMENT IS TO BE ATTACHED TO EACH INTERSTATE AND INTRASTATE JOB OFFER

IN VIEW OF THE STATUTORILY ESTABLISHED BASIC FUNCTION OF THE EMPLOYMENT SERVICE AS A NO FEE LABOR EXCHANGE, THAT IS, AS A FORUM FOR BRINGING TOGETHER EMPLOYERS AND JOB SEEKERS, NEITHER THE ETA NOR THE STATE AGENCIES ARE GUARANTORS OF THE ACCURACY OR TRUTHFULLNESS OF INFORMATION CONTAINED ON JOB ORDERS SUBMITTED BY EMPLOYERS. NOR DOES ANY JOB ORDER ACCEPTED OR RECRUITED UPON BY THE ES CONSTITUTE A CONTRACTUAL JOB OFFER TO WHICH THE ETA OR A STATE AGENCY IS IN ANY WAY A PARTY.

I HEREBY ASSURE THAT THE WORKING CONDITIONS OF MY ORDER COMPLY WITH APPLICABLE FEDERAL AND STATE MINIMUM WAGE, CHILD LABOR, SOCIAL SECURITY, HEALTH AND SAFETY, FARM LABOR CONTRACTOR REGISTRATION AND OTHER EMPLOYMENT RELATED LAWS: AND THAT I WILL PROVIDE A COPY OF THE WORK CONTRACT TO THE WORKER IN ENGLISH OR IN SPANISH IF THE WORKER IS NOT FLUENT OR LITERATE IN ENGLISH.

THIS JOB OFFER DESCRIBES THE ACTUAL TERMS AND CONDITIONS OF THE EMPLOYMENT BEING OFFERED BY ME AND CONTAINS ALL THE MATERIAL TERMS AND CONDITIONS OF THE JOB.

I certify that the housing provided by me meets, or will meet prior to occupancy, federal, or state standards whichever is higher.

_____

EMPLOYER'S SIGNATURE

RECEIVED NOV 27 1991

HARRISON & JOHNSTON
ATTORNEYS AT LAW
WINCHESTER VIRGINIA 22601-0809

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WILLIAM A. JOHNSTON

H. K. BENHAM III
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THOMAS A. SCHULTZ, JR.

BRUCE E. DOWNING
IAN R. D. WILLIAMS

MAILING ADDRESS:
P.O. BOX 809

TELEPHONE
AREA CODE 703
667-1266

FAX NO.
703-667-1312

November 26, 1991

Honorable Robert K. Woltz, Judge
Twenty-sixth Judicial Circuit
Joint Judicial Center
5 North Kent Street
Winchester, Virginia 22601.

Re: Fernandos Varges Soto, et al
v. Orchard Management Company, et al
Circuit Court of Frederick County
Law Nos. 4027-4056

Dear Judge Woltz:

I am in receipt of a copy of Mr. Rosenfield's letter to you of November 25, 1991.

We will be seeking a writ of certiorari in the U. S. Supreme Court from the decision of the West Virginia Supreme Court of Appeals in *Surrillo v. Drilake.* By our view, *Surrillo* added nothing to the mistakes made by the New York Court in *Rios.*

The fact remains that there was no contact at all between the growers and Puerto Rico. Certainly, Drilake did not "purposefully avail" itself of the privilege of conducting business in Puerto Rico, thus invoking the benefits and protections of its laws as is required by the long line of cases handed down by the U. S. Supreme Court as pointed out in the dissenting Opinion of Justice Neely in *Surrillo.*

In view of the long passage of time, we respectfully request a hearing before the Court issues its Opinion.

Respectfully yours,
ORIGINAL SIGNED
W. A. JOHNSTON
William A. Johnston

WAJ:nh

cc: Steven D. Rosenfield, Esq.